Supreme Court, U.S.
FILED
SEP 9 1992
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No. 91-2041

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

DAVID G. HARRIS,

Petitioner,

v.

FIRST NATIONAL BANK OF SPENCER and,
CLARA BOGGS and SYDNEY BOGGS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

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SUPPLEMENTAL BRIEF

DAVID G. HARRIS, Pro Se
507 - C - Street, Northeast
Washington, D. C. 20002
Telephone (202) 546-6666

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

6 pp

STATEMENT

On page 6a of the Petition, the order of Chief Judge Hayden shows that the notice of appeal was filed on April 14, 1991. (See Appendix B of the Petition.)

On Page 13a of the Petition, which is the docket, (See Appendix G of the Petition) the Secretary to the Clerk of the Court (See Exhibit "A" attached hereto) indicates that the notice of Appeal was filed on April 18, 1991. (See Page 13A of Appendix G of the Petition.) This would indicate that the mail took at least 4 days to go from Washington, D. C. to Charleston, West Virginia.

According to the Secretary to the Clerk of the Court, the postal service picks up the mail from the Court at 3:00 and 5:00 each day. Based on this information according to Exhibit "A" attached hereto, the probability of when the mail would have left Charleston, WVA would be on the following day, April 2, 1991. Since it can be assumed that it takes 4 days for mail to go from Washington, D. C. to Charleston, West Virginia, appellant should have received the order on the 6th, when in fact, the order was received on the 10th of April (See Appendix E of the Petition.) If the time for tolling began on the 6th of April, then appellant's notice of appeal was timely filed.

In the second case, Docket No. 88-40064, the docket (See Appendix F of the Petition) indicates that the order was signed on April 1, 1991, the Court's certificate of services shows the mailing date of April 3, 1991 and the entry onto the docket was made on April 9, 1991. (See Page 12a of Appendix F of the Petition.)

According to the Secretary to the Clerk of the Court, the postal service picks up mail at 3:00 and 5:00 each day. Based on this information according to Exhibit "A" attached hereto, the probability of when the mail would have left Charleston, WVA would be on the following day, April 4, 1991. Appellant did not receive the two orders of Judge Pearson of April 1, 1991 until April 10th and 11th (See Appendix F and Appendix G of the Petition).

Assuming arguendo that the order which was mailed on the 3rd of April, 1991, did not leave Charleston, West Virginia until April 4, 1991 and in accordance with Judge Hayden's notice of filing date of filing to be April 14, 1991, which would add 4 days to the date of service and since April 3rd plus 4 days would make the delivery date in Washington to be April 7th. The notice of appeal was timely filed. The order of Judge Hayden did not address this particular case, nor did the Appellate Court in Richmond. This notice of appeal has never been ruled upon.

It is obvious that litigants (petitioner) are at the mercy of the Clerk of the Courts and the United States Postal Service, who are many times inefficient. What is to be done? Also, the signing of an order by a Judge after 3:00 P.M. would not be mailed until the following day, if then. Must petitioner have called the Court long distance on a daily basis and asked if the Court has reached a decision in his case so that he could be certain of filing a timely notice of appeal? Clearly, this is not only absurd, it is inequitable.

Also if the Judge signs the order after 3:00 p.m., then it is reasonable to assume that the order would not have been mailed until the following afternoon.

This supplemental brief is submitted in order to more clearly clarify the facts and issues involved herein.

Dated this 9th day of September, 1992.

DAVID G. HARRIS, Pro Se
507 - C - Street, Northeast
Washington, D. C. 20002
Telephone (202) 546-6666

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
UNITED STATES COURTHOUSE
SAMUEL L. KAY 500 QUARRIER STREET, ROOM 2201 TELEPHONE:
CLERK 304-347-4114
CHARLESTON, WEST VIRGINIA 25301

MAILING ADDRESS:
P. O. BOX 3924
CHARLESTON, WV 25339

August 11, 1992

David G. Harris
507 - C - Street, N.E.
Washington, DC 20002

Re: AP #90-133

Dear Mr. Harris:

Pursuant to our phone conversation on August 10, 1992, and in response to your letter dated August 7, 1992, please be advised that there are no document numbers 13 and 14 in Adversary Proceeding Number 90-133. It has been determined that two documents were docketed in the AP and then it was discovered that the two documents did not belong in the AP and were removed from the case. The document numbers were not reset in the computer so there is a gap in those numbers.

During our conversation you asked for an explanation of several other matters relating to document entries. The date in the left hand column indicates the date the document was filed in our office or the date an order was entered by the Judge or the date an Order or Notice was mailed to creditors and other parties in interest. The Entry on Docket (EOD) date indicates the date the document or order was entered into the BANCAP system by the docket clerks.

In answer to your last question, our mail is taken to the first floor of our building for pickup by the Postal Service at 3:00 pm and 5:00 pm each day.

Sincerely,

/s/ Gloria J. Bailey
Gloria J. Bailey
Secretary to the Clerk